IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Criminal No. 00-513-1**
	:	
CLIFFORD WASHINGTON	:	

MEMORANDUM ORDER

Defendant is charged with possession of firearms by a convicted felon and possession of crack and cocaine with intent to distribute. Defendant has moved to suppress as evidence the three firearms and bags of drugs seized from his residence at 506 South 60th Street by Philadelphia police officers on March 22, 2001.[1] He has also moved to suppress an inculpatory statement given to detectives after his arrest following the discovery and seizure of these items.

Defendant has not questioned his waiver of Miranda rights or the voluntariness of the statement to detectives. Rather, he contends that the statement was the product of an unconstitutional search of his residence. Although conducted pursuant to a warrant, the search of the residence was unreasonable according to defendant because the supporting affidavit failed to establish probable cause. Defendant has not claimed that police misrepresented or withheld any material information in connection with the application for the search warrant. Rather, defendant challenges the adequacy of the

[1]Police seized two semiautomatic handguns and an assault rifle with a thirty round clip. While searching for firearms, the officers found the drugs and seized them as well.

information presented as set forth in the supporting affidavit. As defendant's challenge is a facial one, the inquiry is limited to the four corners of the affidavit. See U.S. v. Gladney, 48 F.3d 309, 312 (8th Cir. 1995); U.S. v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993); U.S. v. Stanert, 762 F.2d 775, 778 (9th Cir. 1985).

Probable cause to issue a search warrant exists when it appears from a common sense review of the totality of the circumstances set forth in the affidavit that there is a fair probability fruits, instrumentalities or other evidence of crime will be found in a particular place. See Illinois v. Gates, 462 U.S. 213, 238-39 (1983); U.S. v. Hodge, 246 F.3d 301, 305 (3d Cir. 2001). Direct evidence linking the place to be searched to the crime under investigation is not required as probable cause may be based on reasonable inferences. Id. at 305-06; U.S. v. Whitner, 219 F.3d 289, 297 (3d Cir. 2000).

In the supporting affidavit, Detective Frank Martin recounted a home invasion robbery attempt by an unknown perpetrator at 508 South 60th on March 21, 2000. The information in the affidavit was supplied by the three occupants, the owner, his girlfriend and his thirteen year old son, and is based on their personal observations. That information includes the following.

The perpetrator held the three occupants in the living room at gun point and demanded money and jewelry. When the owner said he had none, the gunman handcuffed the owner, placed a

pillow case over his head and stated he was bringing someone in the owner would recognize. The gunman then left through the front door. The owner managed to free himself and lock the front door. He directed his girlfriend and son to flee out of the back. After running around to the front, the son observed defendant in an automobile yelling at the gunman to come with him. All three victims had seen the gunman and defendant, their next door neighbor, together on numerous occasions.

Detectives presented the information in the affidavit to an assistant district attorney for review and then to a City bail commissioner who issued a warrant to search for a handgun and ammunition in connection with the ensuing burglary and aggravated assault investigation.

One could reasonably conclude that a gunman during an attempted home invasion robbery would only invite someone to come in who was an accomplice and was nearby. One could reasonably infer that defendant was that person. He was not only the victims' neighbor, but was seen sitting in an automobile in front of their residence at the time of the crime. He was seen keeping company with the gunman on many prior occasions and was observed summoning the gunman at the scene of the crime. There is no direct account of what transpired between defendant and the gunman after he was summoned but from his apparent decision to depart and under all of the circumstances, it would be reasonable to infer he left the handgun with defendant. Moreover, one could reasonably conclude that an individual reasonably perceived as

about to join an armed perpetrator at the site of a home invasion attempted robbery in progress possessed at least one firearm himself.

The commissioner had a "substantial basis" to conclude that probable cause was present. Gates, 462 U.S. at 238.[2] At a minimum, the affidavit was not so lacking in indicia of probable cause as to render objectively unreasonable the reliance of a reasonably well trained officer on the commissioner's determination of probable cause and authorization of the warrant. See U.S. v. Leon, 468 U.S. 897, 922-23 & n.23 (1984); Hodge, 246 F.3d at 307; U.S. v. Williams, 3 F.3d 69, 74 (3d Cir. 1993).

ACCORDINGLY, this day of June, 2001, upon consideration of defendant's Motion to Suppress Evidence and the government's response thereto, consistent with the oral ruling at court proceedings yesterday, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

_____

JAY C. WALDMAN, J.

[2]The "substantial basis" standard as articulated in Gates has been equated to a clearly erroneous standard and is, in any event, quite deferential. See U.S. v. Conley, 4 F.3d 1200, 1205 & n.2 (3d Cir. 1993). Even if the court were to accept defendant's contention that a decision of a bail commissioner should receive less deference than that of a judicial officer with more comprehensive legal training, the court would conclude that the information presented was, if not overwhelming, sufficient to authorize the warrant in this case.